



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert E. Corbin

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ARIZONA ATTORNEY GENERAL

April 10, 1985

Douglas R. Norton
Auditor General
111 West Monroe, Suite 600
Phoenix, Arizona 85003

RE: I85-051 (R85-036)

Dear Mr. Norton:

You have asked two questions concerning the Graham County Community College District "computer literacy incentive program" (CLIP). Your first question is whether it is legal for the community college district to grant interest free loans, using its auxillary enterprise fund monies, for employees and Board members to purchase computers. We conclude that CLIP is legal insofar as it is not an unconstitutional gift or loan of credit. We reach the same conclusion in answer to your second question, which is whether it was legal for the Community College District to purchase personal computers and loan them to employees and Board members for use at home for periods up to three months.

Ariz.Const., article IX, § 7 (article IX), provides:

Neither the State, nor any county, city, town, municipality, or other subdivision of the State shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or

become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the State by operation or provision of law.

We initially note that the fact that auxillary enterprise monies are derived from student fees and other like sources does not render the Arizona constitutional prohibition against gifts and the lending of credit inapplicable. Without question these monies are public funds subject to the constitutional requirements of article IX, § 7. Generally see Ariz. Atty. Gen. Op. Nos. 57-66, and 76-182 at page 5 and footnote 2.

While public funds may not be loaned or given to private individuals or entities, an incidental private benefit is not prohibited by article IX as long as there is a public purpose served by the expenditure or loan of funds and the value to be received by the public is not far exceeded by the consideration being paid. In City of Glendale v. White, 67 Ariz. 231, 194 P.2d 435 (1948) the Arizona Supreme Court acknowledged that the term "public purpose" is incapable of exact definition and may change to meet new developments and conditions:

No hard and fast rule can be laid down, for in determining whether a proposed expenditure of public funds is valid as devoted to a "public use or purpose" each case must be decided with reference to the object sought to be accomplished and to the degree and manner in which that object affects the public welfare.

The court concluded that it would not substitute its judgment concerning public purpose for that of the governing body unless its exercise of judgment or discretion was shown to have been "unquestionably abused." 194 P.2d at 439.

More recently the Arizona Supreme Court in Wistuber v. Paradise Valley Unified School District, 141 Ariz. 346, 687 P.2d 354, 357 (1984) discussed the purpose of the constitutional prohibition against the loaning of credit and the giving of gifts:

The constitutional prohibition was intended to prevent governmental bodies from depleting the public treasury by giving advantages to special

interests [citation omitted] or by engaging in non-public enterprises [citation omitted]. Of course, either objective may be violated by a transaction even though that transaction has surface indicia of public purpose. The reality of the transaction both in terms of purpose and consideration must be established. A panoptic view of the facts of each transaction is required. [citation omitted]. . . . The public benefit to be obtained from the private entity as consideration for the payment or conveyance from a public body may constitute a "valuable consideration" but the Constitution may still be violated if the value to be received by the public is far exceeded by the consideration being paid by the public. Of course, in reviewing such questions, the courts must not be overly technical and must give appropriate deference to the findings of the governmental body.

The Graham County Community College District has described the purpose of the Computer Literacy Incentive Program as:

To encourage the rapid development of computer applications and to facilitate the integration of computers into every aspect of the district's educational and administrative systems.^{1/}

1. The formal resolution of the Community College Governing Board stated: "It is in the best interest of the College to encourage the rapid development of computer literacy among staff and governing authorities."

The Community College District in its Fall 1984 publication, Update, concluded that the CLIP program had created:

. . . a renewed feeling of esprit de corp among the college personnel. Approximately fifty percent of the full-time faculty and staff will no doubt learn more about computers with their own machines that they would have, had the college chosen to spend extensive funds to offer short term in-service education in one of the college's computer labs.

The constitutionality of the CLIP program thus must be closely examined to determine whether its value to the public is far exceeded by its costs, giving due deference to the purpose of the program as found by the District upon its establishment. As we have previously stated:

In brief, the previously mentioned cases indicate that art. IX, sec. 7 of the Arizona Constitution will not be violated if public money is spent for "public purpose." Whether a "public purpose" exists depends upon all of the attendant circumstances. However, a determination by the responsible governing body that the requisite purpose exists will not be disturbed unless the determination is shown clearly to be wrong. The mere fact that a governing body characterizes a program or activity as having a "public purpose" is obviously not sufficient; but the governing body's decision is not lightly to be disregarded. Finally, in this connection, the "public purpose" of a public educational institution obviously must be educational in nature, which, broadly construed, means that it must tend to make better citizens of those who participate in its programs. But the method of improving the citizenship with the participants may vary over time.

Ariz. Atty. Gen. Op. No. 76-182 at page 11.

In determining whether the CLIP program meets the "public purpose" test, it is instructive to compare it to other public educational programs that similarly have been examined to determine whether they constitute a gift. For example, we concluded in Ariz. Atty. Gen. Op. 180-219 that a school district may pay for courses to be taken by its teachers because those courses upgrade the educational programs of the school. The fact that there is an incidental private benefit to the teachers themselves does not destroy the public purpose. Similarly see, Ariz. Atty. Gen. Op. 182-029 concurring with the conclusion that a school district could pay tuition and a subsistence allowance to teachers who take an intensive summer course to qualify them to teach mathematics; Ariz. Atty. Gen. Op. 181-045 concluding that it serves a public purpose to pay for meals and lodging of students who participate in athletic events or other extracurricular activity; and Ariz. Atty. Gen. Op. 179-105 where we concluded:

If attendance at in-service training program is intended to promote "the educational advancement of the youth of the district," teachers may be compensated for their attendance at such a program, because such compensation would serve a valid "public purpose" and would not, therefore, violate the constitutional spending proscriptions embodied with art. IX, sec. 7 of the Arizona Constitution. [Citation omitted]. (At page 4.)

Also see Ariz. Atty. Gen. Op. No. 78-14.

In determining whether the CLIP program serves a public purpose, you may also consider whether a similar program has been approved by a similar institution. Ariz. Atty. Gen. Op. No. 76-182, p. 11, at n. 7.² Also see, Board of Regents v. Frohmiller, 69 Ariz. 50, 208 P.2d 833 (1949) where the Arizona Supreme Court examined the history of ceremonies installing a new university president and the general acceptance of that custom nationwide to conclude that there was a public purpose for the university to expend public funds to pay for the president's inauguration:

Ceremony, it is true, is not a necessity; a new president could be seated with no more ceremony than attends the swearing in of a constable, but this overlooks the nature of an institution of higher learning, the character and needs of a large body of undergraduates and their professors; the loyalties inspired in them by their university; the value of ritual and symbolism in developing those loyalties in formative minds; the calling of attention to the unity of all the colleges and schools of the University and the centering of control of a vast educational plant with its multitude of diverse interests and aspirations in the president. The dignity of the office is enhanced by such

2. Arizona State University has granted a 30% reduction to state employees and their family members off its computer institute fees.

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ceremonies. A failure to avail the University of the opportunity to signalize the importance of this event in its life when the reins of control are transferred to a new president might more readily subject the board to a charge of laxity and indifference to the psychological values inherent in the occasion than with extravagance for providing for a ceremonious celebration of so important an event. We have no hesitancy in holding that reasonable expenditures for the purposes exhibited by these claims fall in the category of expenditures for a "public purpose."

208 P.2d at 838-839.

We note, however, that the loan program, insofar as it allows Board members, rather than faculty, to purchase a computer or to borrow a computer for a period up to three months, may only marginally serve such a "public purpose."^{3/}

Sincerely,



BOB CORBIN
Attorney General

BC:DR:sr

3. We also caution that, in voting on such a program, which includes a direct personal benefit to themselves, the Board members' votes may be in violation of Arizona's conflict of interest laws. A.R.S. § 38-503 et seq. Board members may not vote upon and approve a policy or program that would loan computers or money to buy computers to themselves, as they clearly have a direct and substantial interest in such a program, which direct interest is expressly prohibited by A.R.S. § 38-503.